

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 12-12020-mg; Adv. Proc. No. 12-01896-mg

5 - - - - -x

6 In the Matters of:

7 RESIDENTIAL CAPITAL, LLC, et al.,

8 Debtors.

9 - - - - -x

10 WILLIAMS,

11 Plaintiff,

12 - against -

13 GMAC MORTGAGE LLC,

14 Defendant.

15 - - - - -x

16 United States Bankruptcy Court

17 One Bowling Green

18 New York, New York

19
20 November 20, 2012

21 3:33 PM

22
23 B E F O R E:

24 HON. MARTIN GLENN

25 U.S. BANKRUPTCY JUDGE

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RESIDENTIAL CAPITAL, LLC, ET AL
P R O C E E D I N G S

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1
2 THE COURT: All right. Please be seated. We're here
3 on Residential Capital, number 12-12020.

4 Mr. Lee?

5 MR. LEE: Good afternoon. Gary Lee from Morrison &
6 Foerster for the debtors.

7 Your Honor, I apologize for the delay, but the good
8 news is that other than a couple of clarifications that we need
9 to make on the record, the language in the order is resolved,
10 at least amongst the buyers, the debtors and the objectors. So
11 I'm going to turn the podium over to Mr. Goren, who is just
12 going to read those into the record, Your Honor. And then if I
13 may just make a few very brief closing remarks.

14 THE COURT: Thank you.

15 MR. LEE: Thank you.

16 MR. GOREN: Thank you, Your Honor. Todd Goren,
17 Morrison & Foerster on behalf of the debtors.

18 The version of the order we filed a short while ago in
19 Ocwen, I believe, is finished, subject to confirmation from
20 HSBC on just one point, unless I hear -- the committee says
21 they're still reviewing it, apparently.

22 The one clarification I wanted to make on the record
23 with respect to that one is in -- I believe it's paragraph 43,
24 the application --

25 THE COURT: Hang on.

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1 MR. GOREN: -- of the purchase price allocation
2 reservation.

3 THE COURT: Hang on.

4 MR. GOREN: The --

5 THE COURT: Stop. Stop.

6 MR. GOREN: I'm sorry.

7 THE COURT: Okay.

8 MR. GOREN: Wilmington Trust and the junior secured
9 bonds raised a concern that in other places in this order we
10 gave Ocwen an administrative expense claim against the debtors
11 in exchange for them agreeing to take on obligations that would
12 have otherwise been ours under the APA. That claim is against
13 the debtors, not a specific debtor, and the concern was that it
14 should be against the applicable debtor.

15 Now of course, because we've reserved the right to
16 tinker around with the purchase price and move it, as agreed
17 upon or as ruled by the court, Ocwen, understandably, wanted
18 the ability to assert it against all the debtors. So we
19 inserted some language here saying that the applicable debtor,
20 meaning the debtor that's primarily liable for that, will pay
21 it. And just to be clear, to the extent for any reason another
22 debtor pays it, there would be a contribution claim between the
23 debtors.

24 THE COURT: So where -- do you have a specific
25 language change?

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1 MR. GOREN: Yeah, the new -- it's the last two
2 sentences at the end of that paragraph.

3 THE COURT: Can you read the agreed language in --

4 MR. GOREN: Yeah, it's: "For the avoidance of doubt,
5 any administrative claims asserted by purchaser, pursuant to
6 the order or the Ocwen APA, shall be attributed by the debtors
7 first to the applicable debtor, to the extent there are funds
8 available at such debtor to satisfy such claims. Any
9 attribution, as set forth herein, shall not affect the
10 purchaser's rights to an administrative claim against the other
11 debtors, as set forth herein, to the extent not paid by the
12 applicable debtor."

13 THE COURT: All right. Is someone from Wilmington
14 Trust present? Just come up and identify yourself.

15 MR. RUBINSTEIN: Good afternoon, Your Honor. Vadim
16 Rubinstein of Loeb & Loeb, counsel to Wilmington Trust as
17 indenture trustee.

18 THE COURT: Does the language that Mr. Goren read into
19 the record satisfy your client?

20 MR. RUBINSTEIN: With the clarifications, that
21 language is acceptable.

22 THE COURT: All right, thank you.

23 Anybody else have something to say, just with respect
24 to this specific paragraph and the change that's just been read
25 into the record?

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1 MR. DENMAN: Your Honor, Harrison Denman, White & Case
2 for the ad hoc group. The changes, as explained by Mr. Goren,
3 are fine with us, to the extent there is a valid contribution
4 claim.

5 THE COURT: Thank you.

6 Anyone else on this specific point?

7 MR. HOFER: Your Honor, Jonathan Hofer from Skadden,
8 Arps, Slate, Meagher & Flom for Barclays Bank.

9 We're generally very happy with the way the sales
10 turned out. There's more than enough proceeds --

11 THE COURT: Could you just tell me what you think
12 about this change?

13 MR. HOFER: Sure.

14 THE COURT: I'm glad you're happy.

15 MR. HOFER: We just want to clarify that it's just
16 focused -- that the paragraph is just focused on the issue that
17 Mr. Goren had discussed, that the reserva --

18 THE COURT: He read the language. Are you satisfied
19 or not?

20 MR. HOFER: We --

21 THE COURT: It's really a very specific issue; we're
22 talking about paragraph 43. If you have an objection to it,
23 let's state it on the record. It's as clear as that.

24 MR. HOFER: Our objection, which we would be satisfied
25 with that clarification on the record, is that the language

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1 about the allocation of the proceeds potentially changing in
2 this paragraph raises issues about what the -- sorry, let me
3 be --

4 THE COURT: It doesn't sound like you're clarifying
5 anything; you're raising additional issues.

6 MR. HOFER: I don't think it's raising additional
7 issues so much as it's just the scope of what would potentially
8 be --

9 THE COURT: Go in the back; work out the language. I
10 don't have the time or the desire to negotiate on the record.
11 You either have an agreement or you don't.

12 MR. GOREN: Your Honor, Todd Goren again. I don't
13 believe there's any dispute as to the language. I think the
14 concern was just that Barclays had a concern that the
15 reservation of rights in this section could somehow affect
16 their payoff and the payoff of their DIP. And we said we don't
17 see that at all. There's language in the order that says the
18 payment of their DIP is final and indefeasible, so we agree
19 that any subsequent reallocation of the collateral won't affect
20 them at all.

21 THE COURT: Are you satisfied with that
22 representation?

23 MR. HOFER: Yes.

24 THE COURT: All right. Does anybody else want to be
25 heard on that point?

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1 Thank you. Go ahead, Mr. Goren.

2 MR. GOREN: I'm going to turn the podium over to Ms.
3 Barrage on one other point on the Ocwen APA, and then I think
4 we just have a minor point on the Berkshire one.

5 THE COURT: Thank you.

6 MS. BARRAGE: Good afternoon, Your Honor. Alexandra
7 Barrage, Morrison & Foerster on behalf of the debtors.

8 Your Honor, there are two exhibits that were filed in
9 connection with the Ocwen sale order. The first exhibit is the
10 Ocwen APA, dated as of November 2nd. The second exhibit is
11 amendment number 1 to that APA. Amendment number 1 to that APA
12 incorporates Section 616, which is the provision that all
13 parties agree to and which I discussed on the record yesterday.

14 Your Honor, the APA itself contains a provision, at
15 Section 12.8, which generally states that the APA is solely for
16 the benefit of the parties to the APA. 616 has a definition of
17 a performing entity, and it has a third-party beneficiary
18 concept built within that definition. The debtors wish to make
19 clear that, notwithstanding APA Section 12.8, that a
20 "performing entity" is a third-party beneficiary. I just
21 wanted to clarify that for the record.

22 THE COURT: Give me an example.

23 MS. BARRAGE: Well, for example, the definition of
24 "performing entity" means the ResCap sellers, or one or more
25 successor estate fiduciaries, to the extent obligations are

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owing from the purchaser to the estate fiduciaries because the
debtors are no longer in existence, those estate fiduciaries
would be a third-party beneficiary. And so we don't want to
read that out of 12.8.

THE COURT: Anybody wish to be heard with respect to
that clarification?

Thank you very much.

MS. BARRAGE: Thank you, Your Honor.

MR. GOREN: Todd Goren again. Finally, Your Honor,
turning to the Berkshire APA, as I believe --

THE COURT: Before you turn to that, does anybody wish
to be heard with respect to the proposed Ocwen sale approval
order?

Mr. Zide?

MR. ZIDE: Your Honor, Stephen Zide from Kramer Levin
on behalf of the committee.

We received a version of the order last night. We saw
numerous changes. We were okay with almost all of them. We
gave the debtors some comments. We just got a revised, maybe
twenty minutes ago. We're still going through it, so I mean,
we just -- we haven't had the opportunity to complete going
through the order.

And in particular, this 616 change or clarification
which they made on the record, that was a heavily negotiated
provision. There's someone else in my office who's been

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1 working on that provision. I don't know if he is aware of this
2 change, so I need to run this by him.

3 THE COURT: Reasonable. You know, I'm holding up the
4 blackline to the Ocwen order. It's hot off the press in my
5 hands as well. I just finished going through this last version
6 of it. I was only able to do that very quickly, so I fully
7 appreciate that.

8 Mr. Lee, did you want to say something?

9 Mr. Goren?

10 MR. GOREN: We appreciate that, Your Honor. We had
11 hoped to get these on file much earlier today, but in the end
12 we were very close to resolving the last few open points and we
13 thought it was better to have a version as close to final as
14 possible on file than having to be amending here in court. So
15 we certainly apologize for getting it in so late, but --

16 THE COURT: It's not a question of apologies. I mean,
17 it's a question that people are entitled to an opportunity to
18 make sure -- I mean, look, this is important. It's a lengthy
19 document. People are entitled to an opportunity to review it.
20 That isn't intended to open the door to new issues or anything
21 like that. The blackline is very extensive. We'll come back
22 to how we're going to deal with that at the end, okay?

23 Is there anybody else who wishes to be heard with
24 respect to the proposed Ocwen sale approval order?

25 Okay, Mr. Goren, go ahead.

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1 MR. GOREN: And then to the Berkshire one -- and I
2 think the changes here were generally a bit less extensive --
3 there was just one minor change to the language in this one,
4 which we'll make in a revised version and we'll submit to your
5 chambers, hopefully, for filing.

6 It has to do with the resolution of the issue that was
7 raised yesterday with respect to when the DLJ Consortium bid --

8 THE COURT: Yeah, point me to that.

9 MR. GOREN: It's the last paragraph, 39.

10 THE COURT: Okay, hold on.

11 (Pause)

12 THE COURT: Go ahead.

13 MR. GOREN: So the resolution was an agreement upon
14 the committee, DLJ and the debtors that the bid would be
15 released as of December 31st. In little (i) in the whole in
16 that paragraph there was just an extraneous word placed in
17 there: "complete"; it should just read "the closing", which is
18 consistent with the language in the sale procedures order. So
19 we'll make that change and we'll resubmit.

20 THE COURT: Okay. Does anybody wish to be heard with
21 respect to the loan portfolio sale order?

22 MR. GOREN: Barclays had the same concern with this
23 one on the purchase price allocation, so the same clarification
24 that we made earlier applies to this one as well.

25 THE COURT: All right. Are you satisfied with that

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1 representation?

2 MR. HOFER: I am.

3 THE COURT: All right. Does anybody else wish to be
4 heard with respect to the loan portfolio sales order?

5 Mr. Zide? I assume you want to be, although the
6 changes here aren't as extensive, but go ahead.

7 MR. ZIDE: Yeah, that's what I was just about to say,
8 Your Honor. I was focusing on the Ocwen one first, and I just
9 started flipping through it. These were not very extensive. I
10 think we could probably get comfortable with this very quickly.

11 THE COURT: Okay.

12 MR. ZIDE: But the same comment applies to this order
13 as well.

14 THE COURT: All right.

15 MR. ZIDE: Just following up on what Mr. Goren said
16 with the back-up bid on the DLJ Consortium; we had come to a
17 compromise on that for an end date in which they would, and
18 just that's what's incorporated in that provision.

19 THE COURT: Yes, I saw that --

20 MR. ZIDE: Okay.

21 THE COURT: -- and I think that was a good resolution
22 of the issue.

23 MR. ZIDE: Thank you.

24 THE COURT: All right, Mr. Lee?

25 MR. LEE: Your Honor, first of all, I'd like to thank

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1 the court for its indulgence today and also to thank your staff
2 for, as well, over the last few weeks in rather difficult
3 circumstances in working through the objections and asking
4 questions, so I'd like to thank the court.

5 Your Honor, also, I did not get an opportunity
6 yesterday to really -- to thank the other parties that were
7 involved here. Both Ocwen and Berkshire have been working with
8 the debtors around the clock to try to get to the sale hearing.

9 And I think it's also fair for us, Your Honor, not to
10 miss out that Nationstar and Fortress really deserve our thanks
11 as well. Without them we wouldn't have had a stalking-horse
12 buyer for the platform hearing into a Chapter 11, and I can
13 tell Your Honor that there were times when we thought that that
14 was certainly going to be the case. And they did set a nice
15 base line for the sale, and really without them we wouldn't
16 have created the additional 800 million dollars worth of value.
17 And I think also their willingness not just to buy the platform
18 but also to retain the employees really galvanized our ability
19 to set a level playing field to ensure that there was going to
20 be employee retention in any of the bids that we ultimately
21 ended up with. So I wanted to thank them because I think that
22 they were the consummate stalking horse and they certainly do
23 deserve the break-up fee that they've earned.

24 Your Honor, in addition, the U.S. government, as well,
25 really deserves our thanks. The DOJ has been incredibly

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1 responsive, including over the weekend, in helping us get to a
2 resolution of 616, which has been a very contentious provision
3 that's been with us for a long time. And the governmental
4 associations, Fannie and Freddie, really did devote a lot of
5 resources to try to get us to closure.

6 And I'd also like to thank our banker Centerview. I
7 think -- as I said, I don't think any of us on the debtor side
8 ever thought that we'd get to such a robust auction and the
9 price that we got.

10 And I think ResCap, the management, the employees,
11 obviously, are going to be embarking on a different future as
12 of next year, so I'd like to thank them as well because they're
13 to be commended for their effort of really trying to work under
14 what I think Your Honor understands to be incredibly difficult
15 circumstances. So thank you.

16 THE COURT: Okay.

17 MR. LEE: The only other thing I'd like to add, Your
18 Honor, is perhaps what we might do is try and set 12 o'clock
19 tomorrow as a time by which we get everybody --

20 THE COURT: Well, it's going to be --

21 MR. LEE: -- to sign off or earlier --

22 THE COURT: It has to be earlier.

23 MR. LEE: Okay.

24 THE COURT: Mr. Zide wanted --

25 MR. ZIDE: I was just going to say if it's only the

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1 committee who's waiting on this, we may be able to get
2 comfortable this evening and submit the order --

3 THE COURT: Well --

4 MR. ZIDE: -- electronically.

5 THE COURT: -- look, I think the changes are
6 substantial enough that I think others are entitled to the
7 opportunity to review it. I'm not inviting any further changes
8 or issues, but I have hearings tomorrow at 9 a.m. and 10 a.m.,
9 and then I'm departing for the Federal Bar Counsel Thanksgiving
10 lunch.

11 The absolute firm deadline for your working out any
12 remaining changes is 8 a.m. tomorrow morning. If there are any
13 remaining disputes, the parties to the dispute should appear
14 here at 8:30 a.m. when the court opens and hear it before the 9
15 o'clock calendar. Assuming, as I hope is the case, that any
16 word-tinkering that happens will all be agreed upon, you can
17 let my chambers know, and at 8:30 tomorrow if there are agreed
18 orders they will be entered.

19 MR. LEE: Your Honor, I hope I don't --

20 THE COURT: Does that work?

21 MR. LEE: -- see you until December the 20th, and I
22 hope you have a very happy Thanksgiving and a safe one.

23 THE COURT: And you too.

24 MR. LEE: Thank you.

25 THE COURT: I just -- I said this yesterday, but

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1 obviously there was an enormous amount of work that was
2 required in getting to this point. I commend everyone, because
3 without the cooperation of all of the parties-in-interest, this
4 wouldn't have occurred. There were obviously very lengthy and
5 substantial objections to -- no one objected to the sale
6 process or the results of the auction, and I think that, in
7 itself, that speaks for itself. It was a robust auction for
8 both parts of the company that were sold, and the results -- no
9 one has questioned the results. You had complicated
10 transactions. The orders are complicated. The objections
11 raised difficult issues. I think the parties were creative in
12 finding solutions to those problems, and so I think everybody
13 is to be commended. But nobody should lose sight of the fact
14 that there are enormous hurdles yet to be surmounted in this
15 case as we go forward. So I hope everyone will work as
16 cooperatively going forward in trying to solve those issues as
17 they did in solving the ones that arose in connection with the
18 sale. So I hope everybody has a very happy Thanksgiving, and I
19 hope that the only thing we have to do tomorrow morning is
20 enter the orders that are in agreed form.

21 MR. LEE: Thank you, Your Honor.

22 THE COURT: We're adjourned. Thank you very much.

23 (Whereupon these proceedings were concluded at 3:52 p.m.)
24
25

C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET**D-492

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Date: November 21, 2012

(1) ability - circumstances

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